

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

CHARLES DIPASQUALE,

Plaintiff,

Case No. 3:16-cv-219

vs.

JAMES HAWKINS, *et al.*,

District Judge Thomas M. Rose  
Magistrate Judge Michael J. Newman

Defendants.

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**REPORT AND RECOMMENDATION<sup>1</sup> THAT: (1) THE JOINT MOTION TO VOLUNTARILY DISMISS PLAINTIFF'S CLAIMS AGAINST DEFENDANT BRADLEY PROCTOR BE GRANTED; (2) PLAINTIFF'S CLAIMS AGAINST DEFENDANT PROCTOR BE DISMISSED; (3) DEFENDANT PROCTOR BE TERMINATED AS A PARTY TO THIS ACTION; AND (4) DEFENDANT PROCTOR'S MOTION FOR JUDGMENT ON THE PLEADINGS (DOC. 106) BE DENIED AS MOOT**

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This civil case is before the Court on two motions: (1) Defendant Brad Proctor's motion for judgment on the pleadings under Fed. R. Civ. P. 12(c) (doc. 106); and (2) the joint motion of Plaintiff and Defendant Proctor a voluntary dismissal of Plaintiff's claims against Proctor pursuant to Fed. R. Civ. P. 21 (doc. 117). For good cause shown, the undersigned **RECOMMENDS** that: (1) the parties' joint motion to voluntarily dismiss Plaintiff's claims against Defendant Proctor (doc. 117) be **GRANTED**; (2) Plaintiff's claims against Defendant Proctor be **DISMISSED** pursuant to Fed. R. Civ. P. 21 **WITHOUT PREJUDICE**; (3) Defendant Proctor be **TERMINATED** as a party to this litigation; and (4) Defendant Proctor's motion for judgment on the pleadings (doc. 106) be **DENIED AS MOOT**.

Date: August 26, 2019

s/ Michael J. Newman

Michael J. Newman

United States Magistrate Judge

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<sup>1</sup> Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendation.

### **NOTICE REGARDING OBJECTIONS**

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within **FOURTEEN** days after being served with this Report and Recommendation. This period is not extended by virtue of Fed. R. Civ. P. 6(d) if served on you by electronic means, such as via the Court's CM/ECF filing system. If, however, this Report and Recommendation was served upon you by mail, this deadline is extended to **SEVENTEEN DAYS** by application of Fed. R. Civ. P. 6(d). Parties may seek an extension of the deadline to file objections by filing a motion for extension, which the Court may grant upon a showing of good cause.

Any objections filed shall specify the portions of the Report and Recommendation objected to, and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based, in whole or in part, upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs.

A party may respond to another party's objections within **FOURTEEN** days after being served with a copy thereof. As noted above, this period is not extended by virtue of Fed. R. Civ. P. 6(d) if served on you by electronic means, such as via the Court's CM/ECF filing system. If, however, this Report and Recommendation was served upon you by mail, this deadline is extended to **SEVENTEEN DAYS** by application of Fed. R. Civ. P. 6(d).

Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140, 153-55 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).